

Senator Jessica Unruh
North Dakota State Senate
District 33
1224 1st Ave. NE
Beulah, ND 58523

February 25, 2019

The Honorable Markwayne Mullin
2421 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Mullin:

I am North Dakota state Senator Jessica Unruh. In addition to representing the fine citizens in my district of North Dakota for the past 8 years, I have spent 15 years as an environmental regulatory manager for a coal mine, working hand in hand with state regulators implementing federal environmental regulatory programs.

I write to express my support for and describe the value of a state-run primacy program for environmental quality monitoring and enforcement. I will outline the local approach a state-run program provides, its efficacy and the benefit to the American taxpayer as the state partners with EPA on environmental compliance and enforcement.

North Dakota is only one of a handful of states that meets all the national air quality standards and is one of the largest producers of energy in the nation. We are the number two oil producer in the country, ninth in production of coal, thirty-third in electrical generation from coal, number thirty-nine in wind, biomass, and hydroelectric generation, number one in six total agriculture crops and North Dakota is still ranked number one in air and water quality. The environmental quality we North Dakotans enjoy shows that we put the environment first. The North Dakota Department of Environmental Quality (DEQ), created with a bill I introduced, through its programs and its primacy will continue to provide our citizens clean air, clean water and superior soil quality.

North Dakota prioritizes the environment and achieves results all while producing energy our country can rely on. North Dakota lignite coal provides low-cost and dependable electricity to over two million consumers and businesses throughout the Midwest and, according to the U.S. Energy Information Administration, North Dakota ranks near the top for low-cost electricity for residential use. North Dakota is also a top oil producing state, second only to Texas. In December we set a new production record of 1.4 million barrels per day.

EPA's strategic plan for 2018 -2022 includes three goals: to deliver real results, embrace cooperative Federalism, and follow the rule of law and process. These three goals will protect

the environment while providing cost savings and real buy in from companies regulated under the law.

In this strategic plan, EPA recognizes the partnership that the states provide as the first line of regulation and enforcement, with EPA as the second layer, ready to step in when the states need assistance.

EPA's strategic plan says: "The idea that environmental protection is a shared responsibility between the states, tribes, and the federal government is embedded in our environmental laws, which in many cases provide states and tribes the opportunity and responsibility for implementing environmental protection programs. More than 45 years after the creation of the EPA and the enactment of a broad set of federal environmental protection laws, most states, and to a lesser extent territories and tribes, are authorized to implement environmental programs within their jurisdictions in lieu of EPA-administered federal programs. Specifically, states have assumed more than 96 percent of the delegable authorities under federal law."

Environmental quality programs run at the state level can account for geology, geography, topography, hydrology and weather factors specific to the state's longitude and latitude. In engineering and science, temperatures and pressures matter and geology matters. In recovering oil, it matters whether your well completions are a half mile below the surface or two miles below the surface, like they are in North Dakota. In recovering coal, topography, geology and hydrology matter so much they are the first items investigated when looking into a new coal field. North Dakota is a producing state, and we take pride in our products produced for the market, but also the high quality of our clean water and air as we produce.

States are able to design their programs and hire resources necessary to evaluate the specifics, how they change the engineering and science, and regulate within the boundaries of that scientific and engineering design arena. EPA must have a national perspective. It would not make sense, or be a good use of taxpayer dollars, for EPA to have enough resources to regulate to the level of specificity needed to account for each state's physical characteristics. A national approach is not always a sufficient approach, and that is why EPA has the authority to delegate responsibility to the states, partnering with them to make the best use of the manpower, resources, and institutional knowledge available.

State programs have inspectors who make frequent observations of the facilities which the state has permitted. These inspectors are familiar with the facilities they monitor, the sources of discharge and potential emissions, and where to focus inspections to monitor for compliance. If you are not inspecting, you cannot effectively monitor compliance. A state-run primacy program also provides regulatory certainty for industry. EPA is subject to political changes that come with every change in administration. But once established, the state programs provide a steady hand, only modified when new rules are promulgated.

EPA's model of enforcement is a sue and settle model. Once a company receives a notice of violation, the Department of Justice (DOJ) attorneys become the point of contact. Further discussion on data, science or engineering cannot take place with DOJ. The engineers are no longer in the room and the goal becomes negotiating a settlement, which provides no protection of the environment. In North Dakota's experience, the sue and settle model targets one company at a time, takes several months or years to finalize, and can generate millions of dollars in legal fees, both for the taxpayers and the companies, the latter of which only pass on the cost to the consumer.

North Dakota's model for industry has been dubbed "Find it and Fix it," a robust monitoring and inspection program that leads to immediate fixes and compliance to the benefit of the environment. This is possible because North Dakota DEQ meets with multiple companies at one time to discuss ideas for science and engineering-based solutions. In 2016, the oil and gas industry took these discussions further, collectively developing equipment and inspection tools that DEQ director, David Glatt called "Compliance Plus." Not only does this model benefit North Dakotans, but the new designs and tools have already been shared across multiple states and globally within the oil and gas industry.

A state-run program allows the science, data, and facts of environmental controls to govern the discussion, leaving the political and litigation agendas on the side lines. These types of state and industry partnerships encourage the creative minds in the room to develop the most innovative solutions. I have included a fact sheet comparing North Dakota's "Find it and Fix it" program with the EPA's sue and settle model.

As a North Dakotan and a state senator, I am extremely confident that our citizens, state leaders, and regulatory agency employees want and desire clean air and water, we know our state and we will do everything possible to ensure our state continues to have the cleanest air, water, and soil in the nation. I take personal pride in it. North Dakota has continued to achieve the cleanest air and water in the country while becoming a leader in energy development. This has helped our country move toward energy independence while substantially reducing energy costs for every citizen and business across this country.

Thank you. I hope you consider our experience in North Dakota as your committee addresses these important issues.

Sincerely,

Senator Jessica Unruh
North Dakota State Senate

A COMPARATIVE CASE STUDY

The State of North Dakota and the U.S. Environmental Protection Agency under the Obama Administration employed substantially different regulatory approaches to oil and gas development in North Dakota.

NORTH DAKOTA

"FIND & FIX"

Embrace compliance, prevention and innovation for future efficiencies industry-wide. Through this process, regulators and industry work together to identify the issue, find solutions, and fix the issue, resulting in Day 1 compliance that quickly benefits the environment.

THE U.S. EPA

"SUE OR SETTLE"

Emphasis is on penalties and compliance through intimidation. This method embraces bureaucracy and expensive legal pursuits that forces compliance through intimidation rather than focusing on problem-solving. Action is also done one company at a time, meaning very little to no benefit to the environment during the process.

PROCESS DURATION & PARTICIPANTS



10 MONTHS

working with Industry to identify solutions & an agreement issued Oct. 2016. Meanwhile, companies were voluntarily inspecting and modifying equipment.



3 STATE EMPLOYEES

including 2 from Dept. of Health and 1 from Attorney General's Office.



30 COMPANIES

producing 93% of ND's oil and the North Dakota Petroleum Council participated in finding solutions.



130 INDUSTRY EMPLOYEES

participated in the Task Force, consolidating time, effort and expertise.



30 MONTHS

to resolve 1 case with 6 still pending.



12 FEDERAL EMPLOYEES

including 5 EPA Attorneys, 2 Dept. of Justice Attorneys and 5 EPA scientists



1 COMPANY

that produces about 2.5% of North Dakota's oil had its case resolved.



500 PAGES

of documentation, plus more than 10,000 data points of information requested and filed.

COST IN TIME AND MONEY



3,000+ MANHOURS

spent by 30 companies for industry-wide standard.



\$255,000 to \$616,000

in estimated industry employee time.



\$29,200

in estimated government employee time for industry-wide plan.



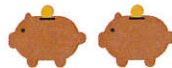
\$4.1 MILLION

in equipment inspection and modification.



\$1.2 MILLION

in industry employee time and contractor fees for one company.



\$186,900 and \$560,700

in estimated federal employee time alone, plus thousands for mileage and travel.

RESULTS



19 CONSENT DECREES

signed, covering 69% of ND's oil production & affecting 7500 wells.



FUTURE COMPLIANCE

Prevention and even new, leak-proof equipment were created.



1 CONSENT DECREE

signed, with 170 wells modified into compliance.



\$4.1 MILLION

spent on fines and mitigation projects that do not assist in resolving issue.

CONCLUSION. North Dakota's inclusive approach consolidates time and effort, allowing for collaborative education, new technologies and designs for enhanced compliance industry-wide that are beneficial early in the process and well into the future.

CONCLUSION. The U.S. EPA's approach addresses the issue one company at a time at a pace three times slower than the "Find and Fix" approach. This means more resources are depleted with very little return to the environment.